

ELIZABETH MARLOWE

subjective.

Q Have you ever been asked before to determine whether or not a modification to previously existing song changed its fundamental character?

A In a professional capacity, no.

Q Would such an analysis depend upon the facts of each case?

MR. BRAUN: Object to the form.

A I'm not sure if we're talking about the facts of the case. I don't understand what you mean by the facts of the case. I think it depends on -- I mean I think that being able to sit down and listen to two pieces of music, as a songwriter myself, I'm very protective of the bundle of rights that I create when I sit down to write. So from my perspective, if the fundamental, the basic message of the song remains the same, this are certain avenues of artistic expression that may result in a different arrangement of the song, but I believe in it's in the ear of the beholder.

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2 or so, give or take.

3 Q And those 30 tracks were different  
4 variations of the six original recordings  
5 or songs?

6 MR. BRAUN: Object to the form.

7 A Six or seven. I thought Lil' Jon  
8 Mega Mix was seven it was licensed -- this  
9 was an original -- it was licensed as an  
10 original Lil' Jon Mega Mix. So there are  
11 seven.

12 Q The copyright infringement case are  
13 only with respect to six underlying PA  
14 copyright?

15 A Okay.

16 Q So with respect to those six  
17 underlying compositions, you listened to  
18 30 or so derivations?

19 MR. BRAUN: Object to the form.

20 A I listened to 30 or so versions of  
21 the songs, yes.

22 Q And of those 30, you found that  
23 despite any modifications to the  
24 originals, the fundamental character of  
25 each work remained the same?

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A Yes.

MR. CAPLAN: Off the record.

(Whereupon, a discussion was held  
off the record.)

BY MR. CAPLAN:

Q Have you ever heard John Coltrane's  
version of My Favorite Things?

A Yes.

Q Have you heard Julie Andrew's  
version of the same song?

A Yes.

Q So is it you're understanding that  
Julie Andrew's version of the same song  
predated John Coltrane's?

A Yes.

\* Q Based upon -- withdrawn.

Do you understand that John Coltrane  
added an improvisational section to the  
song that was not found in the original  
release of the song?

A Yes.

MR. BRAUN: Object to the form.

BY MR. CAPLAN:

Q Is it your understanding that the

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1  
2 additions to the song created by John  
3 Coltrane would be his own independent  
4 expression?

5 A Yes.

6 Q And is it your understanding that  
7 that independent expression from that song  
8 created by John Coltrane would be subject  
9 by itself to copyright protection?

10 A No.

11 Q What leads you to that conclusion?

12 A It's an arrangement. It's a jazz  
13 arrangement of a pop standard.

14 Q Have you listened to John Coltrane's  
15 song in the last year?

16 A Yeah. I have that CD, actually.

17 Q Did you provide it to Mr. Braun in  
18 this case?

19 A No.

20 Q So you're familiar -- there's no  
21 questions that you're familiar with the  
22 song I'm talking about?

23 A Yes.

24 Q When you determined that the basic  
25 melodic was the same when you compared the